

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES JONES

V.

WALTER P. DUNLEARY, ET AL.

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C.A. NO. 02-3818

WEINER, J.

October 30, 2002

**MEMO/ORDER**

The motion of defendants to dismiss the complaint of James Jones is GRANTED IN PART WITH PREJUDICE AND GRANTED IN PART WITHOUT PREJUDICE.

Plaintiff's first claim, that he has experienced diarrhea and constipation from eating prison food is DISMISSED for failure to state a constitutional claim for cruel and unusual punishment. Plaintiff concedes that he has been seen by medical personnel for this problem. Although he does not agree with the treatment he has received, the defendants have not been deliberately indifferent to his complaints.

Plaintiff's second claim, that defendants permitted another inmate to steal plaintiff's legal papers is DISMISSED without prejudice and with leave to file an amended complaint setting forth how plaintiff was injured from this alleged incident. Specifically, plaintiff must set forth that the theft hindered his efforts to pursue a legal claim. If he is unable to meet this requirement, he cannot state a claim.

Plaintiff's third claim also fails to state a claim for deliberate indifference to a serious medical problem, and is therefore DISMISSED. He asserts he fell while coming down stairs in the cell pod. While he asserts he received no treatment, he also concedes he was examined by medical personnel who provided him with a walker to aid his condition. In addition, plaintiff fails to allege that he has exhausted prison grievance procedures as to this claim.

IT IS SO ORDERED.

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CHARLES R. WEINER